

perform the services under the contract except for short periods of vacation time or for unexpected contingencies or emergency situations such as illness, or accident; and

(3) Contracts for the carriage of freight or personnel where such carriage is subject to rates covered by section 10721 of the Interstate Commerce Act.

(e) The following types of contracts have been exempted from all the provisions of the Service Contract Act of 1965, pursuant to section 4(b) of the Act, which exemptions the Secretary of Labor found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business and are in accord with the remedial purpose of the Act to protect prevailing labor standards:

(1)(i) Contracts principally for the maintenance, calibration and/or repair of:

(A) Automated data processing equipment and office information/word processing systems;

(B) Scientific equipment and medical apparatus or equipment where the application of microelectronic circuitry or other technology of at least similar sophistication is an essential element (for example, Federal Supply Classification (FSC) Group 65, Class 6515, "Medical Diagnostic Equipment"; Class 6525, "X-Ray Equipment"; FSC Group 66, Class 6630, "Chemical Analysis Instruments"; Class 6665, "Geographical and Astronomical Instruments", are largely composed of the types of equipment exempted hereunder);

(C) Office/business machines not otherwise exempt pursuant to paragraph (e)(1)(i)(A) of this section, where such services are performed by the manufacturer or supplier of the equipment.

(ii) The exemptions set forth in this paragraph (e)(1) shall apply only under the following circumstances:

(A) The items of equipment are commercial items which are used regularly for other than Government purposes, and are sold or traded by the contractor in substantial quantities to the general public in the course of normal business operations;

(B) The contract services are furnished at prices which are, or are based

on, established catalog or market prices for the maintenance, calibration, and/or repair of such commercial items. An *established catalog price* is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An *established market price* is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor; and

(C) The contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for equivalent employees servicing the same equipment of commercial customers;

(D) The contractor certifies in the contract to the provisions in this subparagraph (e)(ii).

(iii) Determinations of the applicability of this exemption shall be made in the first instance by the contracting officer prior to contract award. In making a judgment that the exemption applies, the contracting officer shall consider all factors and make an affirmative determination that all of the above conditions have been met.

(iv) If the Department of Labor determines after contract award that any of the above requirements for exemption has not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Department of Labor determination. In such case, the corrective procedures in § 4.5(c)(2) of this part shall be followed.

§§ 4.124—4.129 [Reserved]

PARTICULAR APPLICATION OF CONTRACT COVERAGE PRINCIPLES

§ 4.130 Types of covered service contracts illustrated.

(a) The types of contracts, the principal purpose of which is to furnish

§ 4.131

services through the use of service employees, are too numerous and varied to permit an exhaustive listing. The following list is illustrative, however, of the types of services called for by such contracts that have been found to come within the coverage of the Act. Other examples of covered contracts are discussed in other sections of this subpart.

- (1) Aerial spraying.
- (2) Aerial reconnaissance for fire detection.
- (3) Ambulance service.
- (4) Barber and beauty shop services.
- (5) Cafeteria and food service.
- (6) Carpet laying (other than part of construction) and cleaning.
- (7) Cataloging services.
- (8) Chemical testing and analysis.
- (9) Clothing alteration and repair.
- (10) Computer services.
- (11) Concessionaire services.
- (12) Custodial, janitorial, and house-keeping services.
- (13) Data collection, processing, and/or analysis services.
- (14) Drafting and illustrating.
- (15) Electronic equipment maintenance and operation and engineering support services.
- (16) Exploratory drilling (other than part of construction).
- (17) Film processing.
- (18) Fire fighting and protection.
- (19) Fueling services.
- (20) Furniture repair and rehabilitation.
- (21) Geological field surveys and testing.
- (22) Grounds maintenance.
- (23) Guard and watchman security service.
- (24) Inventory services.
- (25) Key punching and key verifying contracts.
- (26) Laboratory analysis services.
- (27) Landscaping (other than part of construction).
- (28) Laundry and dry cleaning.
- (29) Linen supply services.
- (30) Lodging and/or meals.
- (31) Mail hauling.
- (32) Mailing and addressing services.
- (33) Maintenance and repair of all types of equipment, e.g., aircraft, engines, electrical motors, vehicles, and electronic, telecommunications, office and related business, and construction equipment (See § 4.123(e)).

29 CFR Subtitle A (7-1-98 Edition)

- (34) Mess attendant services.
- (35) Mortuary services.
- (36) Motor pool operation.
- (37) Nursing home services.
- (38) Operation, maintenance, or logistic support of a Federal facility.
- (39) Packing and crating.
- (40) Parking services.
- (41) Pest control.
- (42) Property management.
- (43) Snow removal.
- (44) Stenographic reporting.
- (45) Support services at military installations.
- (46) Surveying and mapping services (not directly related to construction).
- (47) Taxicab services.
- (48) Telephone and field interview services.
- (49) Tire and tube repairs.
- (50) Transporting property or personnel (except as explained in § 4.118).
- (51) Trash and garbage removal.
- (52) Tree planting and thinning, clearing timber or brush, etc. (See also §§ 4.116(b) and 4.131(f)).
- (53) Vending machine services.
- (54) Visual and graphic arts.
- (55) Warehousing or storage.

§ 4.131 Furnishing services involving more than use of labor.

(a) If the principal purpose of a contract is to furnish services in the performance of which service employees will be used, the Act will apply to the contract, in the absence of an exemption, even though the use or furnishing of nonlabor items may be an important element in the furnishing of the services called for by its terms. The Act is concerned with protecting the labor standards of workers engaged in performing such contracts, and is applicable if the statutory coverage test is met, regardless of the form in which the contract is drafted. The proportion of the labor cost to the total cost of the contract and the necessity of furnishing or receiving tangible nonlabor items in performing the contract obligations will be considered but are not necessarily determinative. A procurement that requires tangible items to be supplied to the Government or the contractor as a part of the service furnished is covered by the Act so long as the facts show that the contract is